

Stand Up for Public Finance That's Right, Decent: Joe Mysak
2006-02-08 00:06 (New York)

(Commentary. Joe Mysak is a Bloomberg News columnist. The opinions expressed are his own.)

By Joe Mysak

Feb. 8 (Bloomberg) -- Let's keep public finance public.

That's the message Washington Treasurer Michael Murphy sent last month to the state's legislature, which in 2005 asked him to report on so-called 63-20 capital project financing.

The 63-20 format -- the numbers refer to a 1963 IRS ruling -- allows states and municipalities to establish nonprofit public benefit corporations to finance projects. The corporations aren't subject to the same rules, regulations and disclosures that govern most public borrowing; the bonds they sell don't count against state debt limits.

''Its proponents say 63-20 financing offers a convenient way to get badly needed government buildings built in a way that is more easily digestible by a budget-conscious legislature than more traditional state-issued bonds or certificates of participation,'' treasurer Murphy said in an e-mail.

''The main way it achieves this supposed convenience is by skirting public works laws,'' he added.

Murphy's 72-page report examines the eight 63-20 financings that have been done in the state since 2000, and compares the method with how the state traditionally has financed such projects through the sale of general obligation bonds or certificates of participation.

Traditional Ways

There's a lesson that can be applied pretty much everywhere, not just in the state of Washington: There are reasons why we finance some things some ways, so don't be so quick to toss the traditional methods aside.

Or as Murphy put it, ''Not only does the 63-20 structure change long-standing financing practice, it runs the risk of compromising established principles of public works construction. Our state has a strong record of encouraging competitive bidding, ensuring access to participation by small contractors and guaranteeing open public oversight of capital projects, as specified in our public works laws.''

This is a good thing to keep in mind the next time Wall Street visits with one of its new ideas, designed to save your municipality money, or time. Saving money or time doesn't always trump good government.

Treasurer Murphy put it a bit more succinctly on his Web site: ''Lack of transparency and public oversight of capital projects creates an environment where public tax dollars can too easily be squandered and insider deal-making can proliferate.''

Lack of Transparency

The treasurer's report notes that 63-20 financings can lead to a loss of transparency that he, at least, finds troubling. Law firm Orrick, Herrington & Sutcliffe prepared a memo for Murphy, quoted in the report, saying that a 63-20 financing ''is not subject to open public meeting, public disclosure, competitive bidding, prevailing wage, public purpose, jurisdictional, or other restrictions on the exercise of their powers.''

The treasurer observed that the Orrick memo said that such a

single-purpose nonprofit issuer might not even continue ``to observe the appropriate corporate formalities such as having required annual meetings.''

Such financings are also more costly, the report points out. Total cost of issuance for the 63-20 financings covered here ranged from \$19.38 to \$52.34 per \$1,000 bond, compared to an estimated \$7.33 per bond for a GO bond and \$13.65 for a certificate of participation.

Issuers apparently defended the higher financing costs by claiming that the use of 63-20s expedited completion of their projects. None of them provided the treasurer with evidence of consistent cost-savings.

The treasurer's recommendations, then, are hardly surprising. He says that 63-20 financings should be the financing mechanism of last resort in the state, and that the legislature should require state agencies to use the more traditional means of financing unless they can prove a 63-20 financing is more cost-effective.

Little Oversight

Since taking office in January 1997, Murphy has insisted that the state sell its general obligation bonds through auction. He has been a champion of auction, or competitive, sale in practice, and also in theory.

In essence, Murphy has stood astride history and yelled ``Stop.''. The modern history of the municipal bond market is written in the rise of special purpose entities and authorities, all of which can borrow with little actual oversight, all of which operate well beyond the vision of the voters. Every once in a long while a public official decries this shadow government. Every year more new authorities are created.

There has never been more disclosure in the municipal market. There has also, probably, never been so much that is cloaked in secrecy. It's called public finance, and the taxpayers are on the hook for it. So why do I have to keep sending off Freedom of Information Act letters to pry out the most basic information?

--Editors: Greiff (dfr)

Story illustration: To see the full report, go to the state treasurer's Web site, <http://tre.wa.gov>.

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